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May 27, 1999

Mr. David Waddell
Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0505

99-00377

Re: Petition by ICG Telecom Group, Inc. for Arbitration of an Interconnection Agreement with BellSouth Telecommunications, Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996

Dear David:

Please find enclosed an original and thirteen (13) copies of an arbitration petition filed by ICG Telecom Group, Inc. pursuant to the Federal Telecommunications Act of 1996, 47 U.S.C. § 252(b).

BOULT, CUMMINGS, CONNERS & BERRY, PLC

By: 
Henry Walker

HW/nl
Attachment

BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

In the Matter of)
Petition by ICG TELECOM GROUP, INC.)
For Arbitration of an Interconnection)
Agreement with BELLSOUTH)
TELECOMMUNICATIONS, INC. Pursuant)
To Section 252(b) of the Telecommunications)
Act of 1996)

Docket No. 99-00377

PETITION FOR ARBITRATION

ICG Telecom Group, Inc. ("ICG"), pursuant to Section 252(b) of the Communications Act of 1934, as amended (the "Act"), 47 U.S.C. § 252(b), hereby petitions the Tennessee Regulatory Authority ("TRA" or "Authority"), for arbitration of the unresolved issues in the interconnection negotiations between ICG and BellSouth Telecommunications, Inc. ("BellSouth"). Specifically, ICG requests that the Authority resolve each of the issues designated herein as unresolved by ordering the Parties to incorporate ICG's position in the interconnection agreement that is ultimately executed by the Parties. In support of this petition, ICG states as follows:

I. DESIGNATED CONTACTS

All correspondence, notices, inquiries, and orders regarding this petition should be forwarded to the following designated contacts for ICG:

Henry Walker
Boult, Cummings, Conners & Berry
414 Union Street
Suite 1600
Nashville, TN 37219
(615) 252-2363
(615) 252-6363 (fax)

Albert H. Kramer
Michael Carowitz
DICKSTEIN SHAPIRO MORIN & OSHINSKY
2101 L Street, NW
Washington, DC 20037-1526
(202) 828-2226
(202) 887-0689 (fax)

Bruce Holdridge
ICG COMMUNICATIONS, INC.
180 Grand Avenue
Suite 1000
Oakland, CA 94612
(510) 239-7063
(510) 239-7063 (fax)

The BellSouth negotiators assigned to this matter have been:

Mary Jo Peed
Stuart Hudnall
Shelley Walls
BELLSOUTH TELECOMMUNICATIONS, INC.
675 West Peachtree Street, NE
Atlanta, GA 30375
(404) 335-0705

II. STATEMENT OF FACTS

1. ICG Telecom Group, Inc. is a wholly-owned subsidiary of ICG Communications, Inc., which is a publicly traded Delaware corporation, having its principal place of business at 161 Inverness Drive West, Englewood, CO 80112. ICG provides or is authorized to provide competitive circuit-switched local exchange and exchange access services in twenty markets in nine states, including Tennessee, and packet-switched and interexchange services throughout the nation.

2. BellSouth is an "incumbent local exchange carrier" ("ILEC") in Tennessee as defined by the Act. 47 U.S.C. § 251(h). Within its operating territory, BellSouth has been a monopoly provider of telephone exchange services during all relevant times.

3. ICG and BellSouth first entered into an interconnection agreement that became effective on October 27, 1997, and was scheduled to expire one year later on October 27, 1998, (“Interconnection Agreement”). The Parties have continued to operate, and are currently operating, pursuant to the Interconnection Agreement.

4. On December 18, 1998, pursuant to the provisions of the Interconnection Agreement, which allows either party to seek to renegotiate the agreement and thereafter invoke the procedures set forth in Section 252(b)(4)(c) of the Act, BellSouth informed ICG that BellSouth would like to negotiate the terms of a new interconnection agreement pursuant to Section 251 of the Act. ICG seeks to complete a successor interconnection agreement that will replace the existing Agreement. BellSouth and ICG have held numerous meetings, both in person and by telephone, to discuss the rates, terms, and conditions pursuant to which BellSouth would provide interconnection and related services and facilities to ICG.

5. During negotiations for a successor interconnection agreement, each Party provided the other with a proposed draft of the interconnection agreement. Although the Parties did not agree to adopt either proposed draft, ICG believes that during these negotiations ICG and BellSouth reached agreement on many of the issues raised, although specific language has not been explicitly agreed upon. Unfortunately, the Parties also did not reach agreement on a number of specific issues. Thus, ICG seeks arbitration of the unresolved issues it is currently aware of, and due to the imminent close of the statutorily prescribed arbitration window and the intensity of the negotiations, ICG is compelled to seek arbitration of a number of issues that remain under discussion between the Parties, although some issues that remain the subject of discussion, such as OSS, are not included in this petition. ICG remains hopeful that there will be

explicit agreement on issues prior to hearing either through continued negotiations or Authority mediation, and that the scope of hearing can be reduced.

III. JURISDICTION OF THE AUTHORITY

6. Under the Act, Parties to a negotiation for interconnection, access to unbundled network elements, or resale of services within a particular state have a right to petition the respective State commission for arbitration of any open issues whenever negotiations between them fail to yield an agreement. 47 U.S.C. § 252(b). Either Party may seek such arbitration during the period between the 135th day and the 160th day. *Id.* The parties began negotiations on December 18, 1998; thus the window for requesting arbitration opened on May 3, 1999 and closes on May 27, 1999. Accordingly, this petition is filed within the time period established by the Act. Unless waived by both Parties, Section 252(b)(4)(c) requires that the Authority conclude arbitration no later than September 20, 1999 (i.e., within nine months after ICG received BellSouth's request for negotiations). *See* 47 U.S.C. § 252(b)(4)(C).

IV. ARBITRATION ISSUES

7. The unresolved issues are presented in a manner that is consistent with the structure of the draft Interconnection Agreement provided by each Party to the other. In brief, each draft Agreement is structured as follows:

General Terms and Conditions

- 1) Part A – Terms and Conditions
- 2) Part B - Definitions

Bona Fide Request Process

Attachments

- 1) Resale
- 2) Unbundled Network Elements

- 3) Interconnection
- 4) Collocation
- 5) Access to Numbers and Number Portability
- 6) Ordering and Provisioning
- 7) Billing
- 8) Rights of Way/Pole Attachments
- 9) Performance Standards/Measures

V. APPLICABLE ARBITRATION STANDARDS

8. This arbitration must be resolved by the standards established in Sections 251 and 252 of the Act, and the effective rules adopted by the Federal Communications Commission ("FCC") in the Local Competition Order. See 47 U.S.C. §§ 251, 252; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, First Report and Order, 11 FCC Rcd 13042 (1996) ("Local Competition Order"). Section 252(c) of the Act requires a state commission resolving open issues through arbitration to:

- (1) ensure that such resolution and conditions meet the requirements of Section 251, including the regulations prescribed by the [FCC] pursuant to Section 251; and
- (2) establish any rates for interconnection, services, or network elements according to subsection (d) of Section 252.

9. The Authority must make an affirmative determination that the rates, terms, and conditions that it prescribes in this arbitration proceeding for interconnection are consistent with the requirements of Sections 251(b)(c) and Section 252(c) of the Act.

10. Under Section 251(b), 47 U.S.C. § 251(b), each local exchange carrier has the following duties:

- (1) the duty not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on, the resale of its telecommunications service;

(2) the duty to provide, to the extent technically feasible, number portability in accordance with requirements prescribed by the FCC;

(3) the duty to provide dialing parity to competing providers of telephone exchange service and telephone toll service, and the duty to permit all such providers to have nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing, with no unreasonable dialing delays;

(4) the duty to afford access to the poles, ducts, conduits, and rights-of-way of such carrier to competing providers of telecommunications services on rates, terms, and conditions that are consistent with Section 224 of the Act; and

(5) the duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications.

11. Section 251(c) states that each incumbent local exchange carrier, such as BellSouth, has the following additional duties:

(1) the duty to negotiate in good faith;

(2) the duty to provide, for the facilities and equipment of any requesting telecommunications carrier, interconnection with the local exchange carrier's network for the transmission and routing of telephone exchange service and exchange access at any technically feasible point within the carrier's network that is at least equal in quality to that provided by the local exchange carrier to itself, or to any subsidiary, affiliate, or any other party to which the carrier provides interconnection on rates, terms and conditions that are just, reasonable and nondiscriminatory.

(3) the duty to provide, to any requesting telecommunications carrier, nondiscriminatory access to network elements on an unbundled basis at any technically feasible

point on rates, terms and conditions that are just, reasonable and nondiscriminatory and in such a manner that allows requesting carriers to combine such elements in order to provide such telecommunications service;

(4) the duty to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers and not to prohibit, and not to impose unreasonable or discriminatory conditions or limitations on the resale of such services;

(5) the duty to provide reasonable public notice of changes in the information necessary for the transmission and routing of services using that local exchange carrier's facilities or networks, as well as of any other changes that would affect the interoperability of those facilities and networks; and

(6) the duty to provide, on rates, terms and conditions that are just, reasonable and nondiscriminatory, for physical collocation of equipment necessary for interconnection or access to unbundled network elements at the premises of the local exchange carrier, except that virtual collocation may be provided if the local exchange carrier demonstrates to the State commission that physical collocation is not practical for technical reasons or because of space limitations.

12. Section 252(d) sets forth the applicable pricing standards for interconnection and network element charges as well as for transport and termination of traffic. Section 252(d)(1) states in pertinent part that "determinations by a State commission of the just and reasonable rate for the interconnection of facilities and equipment...and the just and reasonable rate for network elements...shall be (i) based on the cost (determined without reference to a rate-of-return or other rate-based proceeding) of providing the interconnection or network element (whichever is applicable), and (ii) nondiscriminatory, and (B) may include a reasonable profit." 47

U.S.C. § 252(d)(1). Section 252(d)(2) further states in pertinent part that “a State commission shall not consider the terms and conditions for reciprocal compensation [for transport and termination] to be just and reasonable unless (i) such terms and conditions provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier’s network facilities of calls that originate on the network facilities of another carrier; and (ii) such terms and conditions determine such costs on the basis of a reasonable approximation of the additional costs of terminating such calls.” 47 U.S.C. § 252(d)(2).

VI. ISSUES AND POSITIONS OF THE PARTIES

Pursuant to Sections 252(b)(2)(i) and (ii) of the Act, ICG’s position on each of the unresolved issues is set forth below. In addition, the position of BellSouth on each issue, as it is understood by ICG, is set forth.

General Issues

Issue 1: Until the FCC adopts a rule with prospective application, should dial-up calls to Internet service providers (“ISPs”) be treated as if they were local calls for purposes of reciprocal compensation?

ICG position: Yes. Until the FCC adopts a rule with prospective application, reciprocal compensation is appropriate for calls to ISPs. ICG incurs costs on behalf of BellSouth whenever ICG terminates calls originated by BellSouth end users to ISPs served by ICG. Without the payment of reciprocal compensation, ICG will receive no compensation at all for the traffic it terminates prior to the time the FCC adopts a prospective compensation rule at some indefinite point in the future.

BST position: BellSouth opposes the payment of compensation for ICG’s costs in terminating calls to ISPs.

Issue 2: Should BellSouth be required to offset the amount paid by ICG in the Bona Fide Request process for BellSouth’s costs in developing a project plan whenever other parties subsequently request and receive the same service at a reduced rate (because BellSouth has already developed the necessary project plan)?

ICG position: Yes. The first carrier to request a particular service or functionality should not bear the financial burden of being first when others will soon follow with the same request.

By refusing to offset such development costs, BellSouth is in a position to discriminate against its most innovative competitors.

BST position: BellSouth stated to ICG that, while “several” carriers had requested an offset to development costs, BellSouth believes that such offsets would be too difficult to manage.

Unbundled Network Elements

Issue 3: Should BellSouth be required to make available as UNEs packet-switching capabilities, including but not limited to: (a) user-to-network interface (“UNI”) at 56 kbps, 64 kbps, 128 kbps, 256 kbps, 384 kbps, 1.544 Mbps, 44.736 Mbps; (b) network-to-network interface (“NNI”) at 56 kbps, 64 kbps, 1.544 Mbps, 44.736 Mbps; and (c) data link control identifiers (“DLCIs”), at committed information rates (“CIRs”) of 0 kbps, 8 kbps, 9.6 kbps, 16 kbps, 19.2 kbps, 28 kbps, 32 kbps, 56 kbps, 64 kbps, 128 kbps, 192 kbps, 256 kbps, 320 kbps, 384 kbps, 448 kbps, 512 kbps, 576 kbps, 640 kbps, 704 kbps, 768 kbps, 832 kbps, 896 kbps, 960 kbps, 1.024 Mbps, 1.088 Mbps, 1.152 Mbps, 1.216 Mbps, 1.280 Mbps, 1.344 Mbps, 1.408 Mbps, 1.472 Mbps, 1.536 Mbps, 1.544 Mbps, Mbps, 3.088 Mbps, 4.632 Mbps, 6.176 Mbps, 7.720 Mbps, 9.264 Mbps, 10.808 Mbps, 12.350 Mbps, 13.896 Mbps, 15.440 Mbps, 16.984 Mbps, 18.528 Mbps, 20.072 Mbps?

ICG position: Yes. BellSouth is required under the Act and under FCC orders to provide UNEs for packet-switched services, including unbundled frame relay packet switching. To ensure that the prices charged to ICG for these capabilities are TELRIC-based, it is necessary that all packet-switched capabilities be available as UNEs.

BST position: BellSouth does not make packet-switched capabilities, such as frame relay or ATM services, available as UNEs. These services are available from BellSouth only as tariffed services.

Issue 4: Should BellSouth be required to provide as a UNE “Enhanced Extended Link” Loops (“EELs”)?

ICG position: Yes. To ensure that the rates charged to ICG for these services are TELRIC-based, it is necessary that the EEL be available as a UNE.

BST position: No. BellSouth offers the EEL only through a “Professional Services Agreement” that would not be a part of the interconnection agreement.

Issue 5: Should BellSouth be subject to liquidated damages for failing to meet the time intervals for provisioning UNEs?

ICG position: Yes. Subjecting BellSouth to liquidated damages for performance failures will ensure that ICG receives the same level of service for which it contracts in the interconnection agreement.

BST position: No.

Issue 6: Should volume and term discounts be available for UNEs?

ICG position: Yes. ICG should receive the benefit of any reduced costs that BellSouth experiences from provisioning service either in high volumes within a specified period or for extended terms.

BST position: BellSouth maintains that there is no legal requirement to provide such discounts.

Interconnection

Issue 7: For purposes of reciprocal compensation, should ICG be compensated for end office, tandem, and transport elements of termination where ICG's switch serves a geographic area comparable to the area served by BellSouth's tandem switch?

ICG position: Yes. ICG's switch provides the same geographic coverage as BellSouth's end office switch and tandem switch provide in combination. ICG also provides transport between its switch and its collocations which is the same as transport from the ILEC tandem to end offices. ICG should be compensated for use of its switch and network in accordance with its overall functionality. To do otherwise would enable BellSouth to manipulate the reciprocal compensation structure to its advantage. Payment of the tandem interconnection rate in this situation is in accordance with FCC Rule 47 CFR Section 51.711(a)(3).

BST position: BellSouth will pay the tandem interconnection rate only if ICG's switch is identified in the local exchange routing guide ("LERG") as a tandem. While BellSouth recognizes that the U.S. Supreme Court's holding in AT&T Corp. v. Iowa Utilities Board, decided January 25, 1999, disposed of the ILEC's challenges to Section 51.711(a)(3), BellSouth declined to give ICG its formal position on this issue until the rule is reinstated.

Issue 8: Until the FCC adopts a rule with prospective application, should dial-up calls to ISPs be treated as if they were local calls for purposes of reciprocal compensation?

ICG position: See Issue 1 above.

BST position: See Issue 1 above.

Issue 9: In calculating PLU and PIU, should BellSouth be required to report the traffic on a monthly basis?

ICG position: Yes. BellSouth's calculation of the PLU and the PIU on a quarterly basis is inefficient. For example, if BellSouth measures PLU/PIU on April 1 and ICG subsequently signs up a customer with heavy local usage on April 15, ICG will not receive the benefit of

winning this customer for PLU/PIU purposes until 2 ½ months later when BellSouth next calculates the PLU/PIU on June 1.

BST position: BellSouth opposes changing the calculation of PLU/PIU on a quarterly basis, which is reflected in its tariff.

Issue 10: Should BellSouth be required to provide to ICG a breakdown of the intrastate and interstate traffic that it reports to ICG?

ICG position: Yes. A breakdown of the intrastate and interstate traffic would greatly assist ICG both in determining how best to serve its customers and in understanding BellSouth's calculations of the PLU/PIU. A breakdown should be relatively easy because the traffic is carried on separate trunks.

BST position: BellSouth was unable to provide an answer to ICG's inquiry.

Issue 11: Should BellSouth be required to commit to provisioning the requisite network buildout and necessary support when ICG agrees to enter into a binding forecast of its traffic requirements in a specified period?

ICG position: Yes. As a growing company, ICG expects that its traffic requirements will rise in the months and years ahead. ICG needs to be certain that its customer's calls will get through and be received as ICG brings more traffic onto the public switched telephone network. To this end, ICG is willing to commit to pay for specified levels of traffic in specified stages, whether or not ICG actually achieves those forecasts, if BellSouth will in turn guarantee that BellSouth's network can support ICG's traffic requirements.

BST position: BellSouth will not enter into a binding forecast within the interconnection agreement context.

Collocation

Issue 12: Should BellSouth be permitted to impose on ICG a burdensome and lengthy process for becoming a "certified vendor" before allowing ICG to install, provision, or maintain ICG's own collocation space?

ICG position: ICG should be able to use its own employees for the performance of tasks within ICG's own collocation space.

BST position: BellSouth would require ICG either to become a "certified vendor" before performing such work or to hire another "certified vendor" to perform the work.

Issue 13: Should BellSouth waive or expedite its "certified vendor" process for ICG employees whenever there are fewer than fifty (50) certified vendors in a designated area,

and/or when a “certified vendor” is unable to perform the collocation work on a timely basis pursuant to ICG’s needs?

ICG position: Yes. BellSouth should not be allowed to use the “certified vendor” process as a way of “bureaucratizing” and slowing down the construction and maintenance of ICG’s collocation space. This is of particular concern now that BellSouth has informed ICG that BellSouth will no longer provide the service of constructing and preparing collocation spaces.

BST position: BellSouth opposes waiving or expediting its “certified vendor” process for ICG employees.

Issue 14: Should BellSouth be permitted to require a “certified vendor” to cross connect ICG’s equipment with the equipment of another telecommunications carrier that desires such a connection?

ICG position: No. ICG should be permitted to cross connect directly to any other telecommunications carriers collocated in the same BellSouth central office without need for action, approval, or charge by BellSouth or “certified vendors”.

BST position: BellSouth permits cross connects to adjacent collocation sites, but a “certified vendor” must be hired when a cross connect is sought for an non-adjacent collocation site.

Issue 15: Should BellSouth be permitted to impose costly and burdensome security escort requirements on ICG legitimate site visits?

ICG position: No. BellSouth should not use security escort requirements for ICG site visits.

BST position: BellSouth requires the use of security escorts, at ICG’s expense, for some visits to BellSouth’s premises.

Issue 16: Should BellSouth be required to limit all charges for the transition of ICG’s equipment from virtual collocation to physical collocation to charges for the actual costs of physical labor in making the transition and a records change?

ICG position: Yes.

BST position: While BellSouth permits transitioning from virtual to physical collocations, it did not specify which charges apply when queried by ICG.

Issue 17: Should BellSouth allow ICG to sublease any of ICG’s equipment located on BellSouth’s premises?

ICG position: Yes. ICG's ability to sublease equipment located on BellSouth's premises is necessary both to make efficient use of central office space and to allow ICG to partner with other telecommunications carriers to better serve ICG customers.

BST position: BellSouth will permit ICG to sublease only "caged" collocation space and equipment, provided that the sublessee is bound by the terms of the interconnection agreement between ICG and BellSouth. Under BellSouth's proposal, BellSouth would continue to regard ICG as its tenant and interact with ICG accordingly.

Number Portability

Issue 18: Should BellSouth be required to update its records immediately after transferring a customer number to ICG?

ICG position: Yes. Whenever ICG attempts to update the directory listing for a customer newly switched over from BellSouth, BellSouth's system (which is associated with BellSouth Telecommunications, Inc., not the unregulated directory services) sends back a false clarification that the customer still belongs to BellSouth. If another attempt fails, an ICG employee contacts BellSouth to remedy the situation. This process, which is particularly time and resource consuming, occurs in the large majority of instances when ICG needs to update a BellSouth directory listing.

BST position: BST was unable to provide a response to ICG's inquiry.

Performance Standards/Measures

Issue 19: Should BellSouth be required to pay liquidated damages when BellSouth fails to install, provision, or maintain any service in accordance with the due dates set forth in an interconnection agreement between the Parties?

Issue 20: Should BellSouth continue to be responsible for any cumulative failure in a one-month period to install, provision, or maintain any service in accordance with the due dates specified in the interconnection agreement with ICG?

Issue 21: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the requirements imposed by the interconnection agreement with ICG (or the service is interrupted causing loss of continuity or functionality)?

Issue 22: Should BellSouth continue to be responsible when the duration of service's failure exceeds certain benchmarks?

Issue 23: Should BellSouth be required to pay liquidated damages when BellSouth's service fails to meet the grade of service requirements imposed by the interconnection agreement with ICG?

Issue 24: Should BellSouth continue to be responsible when the duration of service's failure to meet the grade of service requirements exceeds certain benchmarks?

Issue 25: Should BellSouth be required to pay liquidated damages when BellSouth's fails to provide any data in accordance with the specifications of the interconnection agreement with ICG?

Issue 26: Should BellSouth continue to be responsible when the duration of its failure to provide the requisite data exceeds certain benchmarks?

ICG position: Performance measures have little meaning if they merely identify standards but do not provide a mechanism for curing failures to meet the standards. ICG believes that BellSouth should be held to all intervals, responsibilities, levels of service, grades of service, etc., to which BellSouth commits in the interconnection agreement. To this end, BellSouth should pay liquidated damages for each failure to meet a performance benchmark specified in the agreement. In addition, BellSouth should pay additional damages for cumulative or recurring performance breaches within a specified period because repeated breaches damage both ICG's ability to serve its customers and its reputation in the marketplace.

BST position: Under BellSouth's proposed performance measures, BellSouth would only be in breach when its performance under its interconnection agreement with ICG is worse than the performance BellSouth provides to BellSouth's own customers. BellSouth would not incur any liquidated damages for these breaches. In addition, BellSouth would not incur any liquidated damages for cumulative or recurring failures to perform.

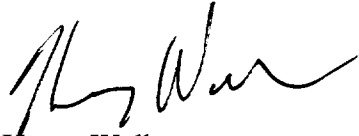
VII. PROCEDURAL MATTERS

13. Section 252(b)(4)(c) requires that the Authority render a decision in this proceeding not later than nine months after BellSouth requested negotiations, i.e., September 20, 1999. To allow the most expeditious conduct of this arbitration, ICG respectfully requests that the Authority issue a procedural order as promptly as possible to establish a schedule for discovery requests, prehearing testimony, prehearing conference, and the timing and conduct of the hearing in this matter.

VIII. CONCLUSION

WHEREFORE, for the foregoing reasons, ICG respectfully requests that the Authority require incorporation of ICG's position on each disputed issue into a successor Interconnection Agreement to be executed between ICG and BellSouth.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "H. Walker", written in a cursive style.

Henry Walker
Counsel for
ICG TELECOM GROUP, INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this Arbitration Petition in the above captioned proceeding has been hand-delivered to the office of Guy Hicks, BellSouth Telecommunications, 333 Commerce St., Suite 2101, Nashville, Tennessee 37201-3300 on this the 27th day of May, 1999.

